

## **TOBACCO**

### **3-19-1: DEFINITIONS:**

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them:

**MINOR:** A person who has not yet attained the age of eighteen (18) years of age.

**PERSON:** Any individual, firm, partnership, corporation, company, association, joint venture or any employee or agent thereof.

**ROLLING PAPER:** That paper product customarily used to insert loose tobacco and, by rolling, make into a cigarette.

**TOBACCO PRODUCTS:** Any substance containing either smoking herbs or tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, loose tobacco, snuff, chewing tobacco or dipping tobacco, and also including rolling paper.

**VENDING MACHINE:** Any mechanical, electric or electronic, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses tobacco products. (Ord. 06-85, 7-10-2006)

### **3-19-2: LICENSE REQUIRED:**

- (A) All persons or entities selling, offering for sale, giving or delivering tobacco products in the village will be required to hold and maintain a valid tobacco license from the village. A separate license shall be required for each point of sale.
- (B) For the purposes of this chapter, "tobacco products" shall include, but not be limited to, tobacco in all its forms and any paraphernalia designed for the smoking or ingestion of tobacco. (Ord. 06-85, 7-10-2006)

### **3-19-3: APPLICATION:**

- (A) Each application for a tobacco license shall be on a form provided by the village clerk and signed by the applicant. The license period shall be from May 1 to April 30.
- (B) The fee for a new or renewed license shall be fifty dollars (\$50.00), payable to the village. All monies shall be deposited by the village treasurer in the corporate fund of the village. (Ord. 06-85, 7-10-2006)

### **3-19-4: ENFORCEMENT:**

- (A) The village of Oswego police department shall inspect each licensee for compliance no less than three (3) times per year. Compliance checks may also be conducted in response to documented citizens' complaints of underage purchase. The police department may apply for funding from the Illinois liquor control commission for compliance checks.
- (B) The police department shall report any violations of this chapter by a licensee to the village president. (Ord. 06-85, 7-10-2006)

### **3-19-5: SALES BY MINORS:**

It shall be unlawful for any licensee, or its agent, director, manager, employee, officer or representative, to permit any staff member under eighteen (18) years of age to sell tobacco products in any licensed premises. (Ord. 06-85, 7-10-2006)

**3-19-6: SALES TO MINORS:**

- (A) It shall be unlawful for any person to sell, offer for sale, give or deliver tobacco products to any person under eighteen (18) years of age.
- (B) It shall be unlawful for any person to sell, offer for sale, give or deliver any tobacco product to an individual without requesting and examining identification establishing that the individual is at least eighteen (18) years of age. (Ord. 06-85, 7-10-2006)

**3-19-7: PURCHASE OR POSSESSION BY MINORS:**

- (A) It shall be unlawful for any person under eighteen (18) years of age to purchase any tobacco product or to misrepresent his or her age or identity for the purpose of purchasing any tobacco product.
- (B) It shall be unlawful for any person under eighteen (18) years of age to possess or use any tobacco product. (Ord. 06-85, 7-10-2006)

**3-19-8: TOBACCO SAMPLES:**

It shall be unlawful to distribute free tobacco products or coupons for such products in or at any event or place open to the public, except upon premises which hold a current and valid tobacco license. (Ord. 06-85, 7-10-2006)

**3-19-9: OUT OF PACKAGE SALES:**

It shall be unlawful for any person to sell or offer for sale cigarettes which are not contained within the manufacturer's packaging. Such packaging must include all required health warnings and a tax stamp verifying that the cigarettes have been legally taxed. (Ord. 06-85, 7-10-2006)

**3-19-10: VENDING MACHINES:**

Vending machines and other devices for the sale or distribution of tobacco products are prohibited, unless the machine or device was in place prior to May 1, 2006. Such machines or devices must be in view of a licensee or its agent, director, manager, employee, officer or representative. (Ord. 06-85, 7-10-2006)

**3-19-11: SIGNS:**

Each licensee at all times will display signs informing the public of the age restrictions provided herein. The sign shall be posted by every licensee at or near every display of tobacco products and on or upon every vending machine which offers tobacco products for sale. Each such sign shall be plainly visible and shall state:

THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY LAW. (Ord. 06-85, 7-10-2006)

**3-19-12: RESPONSIBILITY OF LICENSEES:**

Every act or omission constituting a violation of any of the provisions of this chapter by an agent, director, manager, employee, officer or representative of a licensee shall be deemed and held to be the act or omission of such licensee, and the licensee shall be punishable in the same manner as if it were directly responsible for the act or omission. (Ord. 06-85, 7-10-2006)

**3-19-13: SUSPENSION OR REVOCATION:**

(A) Any licensee which violates any of the provisions of this chapter shall be subject to the suspension or revocation of its tobacco license.

1. The chief of police or his/her designee may seek the suspension or revocation of said license by filing charges with the village president alleging a violation of this chapter. Neither the village president nor any other member of the village board shall be involved in the initial decision to file charges.
2. Before any suspension or revocation order shall be issued, the village shall notify the licensee of the specific charges against it and of its right to a hearing before a hearing officer appointed by the village board. Notice shall be served upon the licensee at least seven (7) days prior to the hearing date by first class or express mail, overnight carrier or personal service. At the hearing, the licensee may be represented by counsel, cross examine witnesses and present documentary evidence and witnesses. The chief of police or his/her designee shall present sufficient evidence from witnesses having personal knowledge of the offense to prove, by a preponderance of the evidence, that a violation of the aforementioned provisions occurred. The strict rules of evidence applicable to judicial proceedings shall not apply to hearings under this section. The record of each hearing shall include: a) a record of the testimony presented at the hearing, which may be by tape recording or other appropriate means; b) any document presented at the hearing; and c) a copy of the written notice of hearing that was served.
3. Following review and consideration of the record, the village board shall issue in writing a determination as to whether a violation occurred. If a violation is found, the village board may suspend the license for a period not to exceed thirty (30) days or revoke the license. The licensee may seek review of a suspension or revocation order in a court of competent jurisdiction.

(B) A violation of this chapter shall also constitute grounds for suspension and/or revocation of any and all village licenses issued to the persons or premises where such violations occur. Such revocation or suspension shall be as provided for in the ordinance granting such license. (Ord. 06-85, 7-10-2006)

**3-19-14: PENALTY:**

Any person found liable/guilty by a preponderance of the evidence of a violation of this chapter in an administrative/judicial hearing shall be subject to a class II fine, plus applicable hearing costs, as provided in subsection 1-4-3(E) of this code. (Ord. 09-42, 5-12-2009)